

LETTER 1

Administrator,

Thank you for your work regarding Cooperative Federalism. As you know, the State of Texas submitted a State Implementation Plan (SIP) to address certain provisions of the Clean Air Act (Regional Haze) in 2009. The Environmental Protection Agency (EPA) chose to disapprove the SIP in 2012. This has resulted in a level of uncertainty regarding power plants and other facilities in Texas for the past several years. Based on recent litigation and opportunities to engage in ongoing discussions with various stakeholders to consider potential solutions, I have asked the Texas Commission on Environmental Quality (TCEQ) to develop a strategy and path forward regarding Regional Haze that is based on current events. You can expect to hear directly from TCEQ on this strategy. Thank you again and we look forward to a positive working relationship.

Sincerely

Gov Abbott

LETTER 2

Regional Administrator

Gentlemen;

Consistent with the letter from Governor Abbott to Administrator Pruitt on _____ 2017, the Texas Commission on Environmental Quality (TCEQ) has developed a strategy to submit a State Implementation Plan (SIP) which complies with the Governor's intentions. TCEQ desires to work collaboratively with EPA consistent with the principles of cooperative federalism. We have detailed the background and path forward below:

BACKGROUND

On March 31, 2009, Texas submitted a proposed State Implementation Plan (SIP) to address Regional Haze. Texas in its 2009 SIP to address Regional Haze committed to take appropriate action if EPA issues a replacement program that does not address Best Available Retrofit Technology (BART). Specifically, we stated in our response to public comments that "[t]he decision to treat [the Clean Air Interstate Rule] CAIR as equivalent to BART will be revisited if CAIR is replaced with a trading program or rule that the EPA considers to be equivalent to BART. . . . *The TCEQ will provide a SIP revision to address this issue*, once the federal government has finalized its decision with respect to CAIR or a replacement trading program for sulfur dioxide and nitrogen oxide." March 31, 2009 SIP submittal, Response to Comments at 17 (emphasis added).

In 2012, EPA finalized a limited disapproval of Texas' regional haze SIP because of its reliance on CAIR as better-than-BART (*see* 77 Fed. Reg. 33,641 (June 7, 2012)). EPA did not include Texas in the simultaneous multi-state FIP which replaced CAIR with the Cross State Air Pollution Rule (CSAPR) as better-than-BART. Because of a partial remand of CSAPR (which included the remand of Texas' CSAPR annual SO₂ and ozone season NO_x budgets), EPA split the remaining obligations into two pieces: the majority of Texas Regional Haze, including Reasonable Progress, and BART (EPA obtained extensions on the deadline for action in the two relevant consent decrees: *National Parks Conservation Association v. EPA*, No. 1:11-cv-01548 (D.D.C.), addressing Regional Haze, including BART; and *Sierra Club v. EPA*, No. 1:10-CV-01541 (D.D.C.), addressing the related Interstate Visibility Transport requirements). In January 2016, EPA finalized an action that included a Reasonable Progress FIP that required controls on 7 coal-fired EGUs (SO₂ scrubber upgrades and retrofits) based on costs and visibility impacts at nearby Class I areas (the Fifth Circuit Court of Appeals remanded this action without vacatur in *Texas v. EPA*, 829 F.3d 405 (5th Cir. 2016)).

The Clean Air Act (CAA) § 169A(b)(2)(A) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the “Best Available Retrofit Technology” (BART), including larger “fossil fuel-fired steam electric plants” (i.e., electric generating units or EGUs). The CAA § 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states, and this requirement is referred to as “interstate visibility transport”.

EPA has proposed to remove Texas from CSAPR for 1997 PM_{2.5} and if this proposal is finalized, BART for SO₂ could not be addressed through the CSAPR better-than-BART pathway (*see* 81 Fed. Reg. 78,954 (November 10, 2016)).

As a path forward, and as described further below, TCEQ agrees to adopt and submit a SIP that adequately addresses the following outstanding CAA requirements: BART for EGUs for SO₂, PM, and NO_x; reasonable progress; and interstate visibility transport for 1997 8-hour ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 8-hour ozone, 2010 1-hour NO₂, and 2010 1-hour SO₂ (“outstanding requirements”). TCEQ believes that any approach to addressing these requirements should have built-in flexibility because of concerns regarding electric grid reliability and TCEQ needs a sufficient amount of time to develop, adopt, and submit such a program. TCEQ believes the useful life of EGUs is often difficult to determine in a competitive market and that the flexibility of a trading program may mitigate that difficulty. TCEQ plans that the Texas regional haze program, in the form of a SIP, will include an intrastate trading program to address the outstanding requirements.

PATH FORWARD:

TCEQ agrees to submit to EPA for action a revision to its SIP to address the outstanding requirements.

- a. To address the outstanding requirements, TCEQ agrees to coordinate with the owners and operators of EGUs in the State as listed in Attachment C to develop a SIP.
- b. TCEQ agrees to submit to EPA for action a revision to its SIP to address the outstanding requirements not later than March 31, 2018.
- c. TCEQ intends for this SIP submittal to incorporate trading program flexibilities to the extent appropriate.
- d. TCEQ intends to ask EPA to parallel process this SIP submittal.
- e. TCEQ intends for this SIP to meet all outstanding requirements: regional haze under CAA § 169A for SO₂, PM, and NO_x BART and reasonable progress; and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for 1997 8-hour ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 8-hour ozone, 2010 1-hour NO₂, and 2010 1-hour SO₂.

TCEQ will request that EPA parallel process this SIP submittal and sign a final action on the SIP revision by December 7, 2018. TCEQ and EPA should work together to meet these goals.

All commitments made by TCEQ in this letter are subject to Texas law concerning appropriations. Nothing in this letter requires TCEQ to expend funds in violation of Texas law.

Sincerely,

TCEQ